of the court. Held, that where land was sold by verbal contract, and the vendee sold it and a deed was made from the original vendor to the purchaser from the vendee, but the same was not recorded until two days after there was left with the clerk a lis pendens in an attachment suit against the land as that of the original vendor, the one purchasing from his vendee had constructive notice.

Attachment—Grounds—Fraudulent Conveyances.—Code 1887, § 2959 [Va. Code 1904, p. 1568], makes it ground for attachment that defendant is about to dispose of his property with intent to hinder, delay, or defraud creditors. A landowner who was indebted on a partnership account to his late partner, promised to give him a deed of trust on his property, but he failed to do so, and thereafter sold it, he having made no secret of the fact that he was endeavoring to sell. He devoted the proceeds of the sale to the payment of other creditors. Held, that the facts did not authorize the issuance of an attachment.

[Ed. Note.—For cases in point, see vol. 5, Cent. Dig. Attachment, §§ 96, 101.]

SHEARER *v.* TAYLOR, Sergeant.

Sept. 24, 1906.

[55 S. E. 7.]

Sheriffs and Constables—Liabilities—Attachment—Levy on Property of Third Person—Damages—Instruction.—The instruction in an action by the owner of property, wrongfully levied on as the property of another, that the measure of damages in this case is the rental value of the property during the time it was held under the warrant, is erroneous, in excluding from the consideration of the jury evidence that at the time of the levy the property was in storage under a contract for its storage for a year, and that it remained in storage six months after its release from the levy, which tended to show that the owner contemplated no use of the property during the time of the levy, and therefore suffered no loss of use because of the levy.

[Ed. Note.—For cases in point, see vol 43, Cent. Dig. Sheriffs and Constables, § 307; vol. 5, Cent. Dig. Aattachment, § 1379.]

Same—Injury during Levy.—Whether plaintiff, whose property was wrongfully levied on as the property of another, is entitled to recover, as an element of damages, for injury to the property occasioned by its storage during the time of the levy, it having remained such time where it had been stored by plaintiff prior to the levy, depends on the determination by the jury of the conflicting evidence as to whether or not the officer or his agents caused the injury.

Same—Damages to Others than Owner.—Plaintiff's furniture having been in storage when levied on, and having remained there for six months after dissolution of the levy, and the only testimony as to loss of use being that of plaintiff's mother and sister, that "we"

wanted it to go housekeeping with, and couldn't because "we" couldn't get the furniture, a requested instruction that there could be no recovery except for such loss as plaintiff herself, and no one else, suffered should have been given.

Same—Evidence of Value of Use.—The value of the use of furniture which its owner lost during the period of a wrongful levy thereon should be estimated by the market value of the use where the property was located, so that evidence of the increase of rental of a house in another city when furnished with such property is not admissible to show the damages from the levy.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Sheriffs and Constables, § 307; vol. 5, Cent. Dig. Aattachment, § 1379.]

LOW MOOR IRON CO. *v.* LA BIANCA'S ADM'R.

Nov. 22, 1906.

[55 S. E. 532.]

Death—Action—Right to Sue—Nonresident Alien Beneficiaries.—Under Va. Code 1904, § 2902 et seq., authorizing the maintenance of an action for the death of a person caused by the wrongful act of another, and providing that the action shall be brought in the name of the personal representative of the decedent, and that the amount recovered shall be paid to the personal representative and distributed by him to the wife, husband, and child of the decedent, an administrator of a decedent who was a resident alien, and whose widow and infant child are nonresident aliens, may bring such an action.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 15, Death, § 38.]

Master and Servant—Injury to Servant—Negligence.—Where an employee engaged in mining ore undertook to punch the waste down a chute in obedience to the foreman's order without knowing, or without being able to ascertain by ordinary care that the waste was not securely supported, but was liable to give way if he worked on it, and the employer knew or by ordinary care might have known that the waste was not securely supported, it was the duty of the employer to warn the employee of the danger to which he would be exposed by so working.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, §§ 310, 316½.]

Same—Reasonably Safe Place in Which to Work.—It is the duty of an employer to exercise ordinary care to provide a reasonably safe place in which an employee is required to work.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, §§ 173, 179.]

Same.—Where the place where an employee was mining ore was not reasonably safe, and he was ignorant of the fact, and could not by ordinary care have discovered the danger, it was the duty of the